JD(SF)-07-16
Los Angeles, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

PRIME HEALTHCARE SERVICES—
ENCINO HOSPITAL, LLC d/b/a ENCINO
HOSPITAL MEDICAL CENTER
Respondent

and **Case 31–CA–140827**

SEIU UNITED HEALTHCARE
WORKERS – WEST
Charging Party

PRIME HEALTHCARE SERVICES –
GARDEN GROVE, LLC d/b/a GARDEN
GROVE HOSPITAL AND MEDICAL CENTER
Respondent

and **Case 31–CA–140844**

SEIU UNITED HEALTHCARE
WORKERS–WEST
Charging Party

PRIME HEALTHCARE CENTINELA, LLC
d/b/a CENTINELA HOSPITAL MEDICAL CENTER
Respondent

and **Case 31–CA–141016**

SEIU UNITED HEALTHCARE
WORKERS—WEST
Charging Party

Rudy Fong Sandoval, Esq., for the General Counsel.
John Fitzsimmons, Esq. (DLA Piper LLP (U.S.)), for the Respondents.
Bruce Harland, Esq. and *Monica Guizar, Esq. (Weinberg, Roger & Rosenfeld),* for the Charging Party SEIU UHW-West.

DECISION

STATEMENT OF THE CASE

LISA D. THOMPSON, Administrative Law Judge. SEIU United Healthcare Workers—West (the Union/Charging Party/UHW) filed a charge against Prime Healthcare Services —Encino Hospital Medical Center, Prime Healthcare—Garden Grove Hospital and Medical Center and Prime Healthcare—

Centinela Hospital Medical Center (collectively known as Respondents or Prime). The Union alleged that Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when Prime failed/refused to furnish information requested by Union (the "failure to furnish" charges).

The Union filed another charge against Prime alleging that Respondents violated Section 8(a)(5) and (1) of the Act when Prime failed/refused to execute a complete written agreement reached between the parties on November 10, 2014, which was to be incorporated in a collective-bargaining agreement (the "failure to execute" charges).

On February 27, 2015, the Regional Director for Region 31 consolidated both charges and issued a consolidated complaint and notice of hearing in this matter. Respondents filed their answer, denying all material allegations and setting forth their affirmative defenses to the complaint. However, in an Order dated May 4, 2015, the "failure to furnish" charges were severed and stayed pending an appeal and determination by the National Labor Relations Board (the Board) on a prior case, *Prime Healthcare, et al.,* JD (SF)-57–14, that was heard and decided by Administrative Law Judge (ALJ/Judge) Jeffrey Wedekind.[1] Thus, the "failure to execute" portion of the complaint proceeded to hearing.

The "failure to execute" charges were tried before me in West Los Angeles, California, from September 2–4, 2015.[2] All parties were afforded a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, argue orally on the record, and file briefs. After carefully considering the parties' briefs and the entire record, for the reasons set forth below, I find that Respondents violated the Act as alleged in the complaint.[3]

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Prime owns and operates several hospitals in California. It acquired Centinela Hospital Medical Center (Centinela) from Centinela Freeman Healthsystems in November 2007. Prime also purchased Encino Hospital Medical Center (Encino) and Garden Grove Hospital and Medical Center (Garden

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[1] See Jt. Stip. 1, ¶1. As one of their primary affirmative defenses to the "failure to furnish" charges in this case and in the prior case before Judge Wedekind, Respondents asserted that they were not obligated to bargain in good faith with or furnish the information requested by the Union because the Union had a "conflict of interest." As grounds therefor, Respondents argued that the Union was disqualified from representing the unit employees, because the Union participated in a strategic partnership with Prime's main competitor, Kaiser, to disparage Prime's reputation; thus, the Union acted in bad faith. This defense was rejected by Judge Wedekind and is the subject of an appeal to the Board. As such, the "failure to furnish" charges in this case were severed from the "failure to execute" portion of this complaint. In light of the appeal, the parties stipulated that Respondents would not raise the Union's "conflict of interest" argument as a defense to bargaining in this case. See Jt. Stip. 1, ¶3.

Abbreviations used in this decision are as follows: "Jt. Stip" for the Joint Stipulation; "Jt. Exh." for the parties' Joint Exhibits; "GC Exh." for the General Counsel's Exhibits; "R. Exh." for Respondents' Exhibits; "CP Exh." for the Charging Party's Exhibits; "GC Br." for the General Counsel's brief; "R Br." for the Respondents' brief; and "CP Br." for the Charging Party's brief.

[2] GC Exh. 1bbb, ¶18. At trial, counsel for the General Counsel (GC/General Counsel) moved to withdraw his request for an "order requiring Respondents to reimburse the Union for its costs and expenses incurred in collective bargaining for all negotiations stemming from the alleged failure to execute the agreement…from November 11, 2014 forward." I granted the General Counsel's motion but gave the Union leave to request this remedy in its closing briefs.

[3] Specific citations to the transcript and exhibits are included where appropriate to aid review, and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant factors have been considered, including the interests and demeanor of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp*., 335 NLRB 622, 633 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB,* 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

Grove) from Tenet Healthcare in July 2008. It is undisputed that, at all material times, Centinela, Encino and Garden Grove have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and have been health care institutions within the meaning of Section 2(14) of the Act.

Prime continued to operate Centinela, Encino and Garden Grove in basically unchanged form and retained a majority of the employees at the three hospitals. Prime adopted the collective-bargaining agreement (CBA) between the UHW and Centinela Freeman Healthsystems for Centinela as well as the two CBAs between the UHW and Tenet for Encino and Garden Grove. All three CBAs covered the service, maintenance, skilled maintenance, technical and business office employees at the three hospitals. Centinela's CBA expired on December 31, 2009. Encino's and Garden Grove's CBAs expired on March 31, 2011.

It is also undisputed that, at all material times, the United Healthcare Workers—West has been the exclusive collective-bargaining representative of the Encino, Garden Grove and Centinela units as they are described in paragraphs 9(a), 10(a) and 11(a) of the complaint.[4] Accordingly, Respondents admit, and I find that, at all material times, the UHW is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

In order to better understand the unfair labor practices alleged in this case, it is important to describe the events in the months leading up to the negotiations for the successor CBAs for Encino, Garden Grove and Centinela.

1. Initial Negotiations for Successor CBAs for Encino, Garden Grove and Centinela Hospitals.

Beginning around 2010, the parties met to negotiate successor agreements for the unit employees at the three hospitals. During these negotiations, Richard Ruppert (Ruppert) served as the chief negotiator for the Union, and Mary Schottmiller (Schottmiller) served as the chief negotiator for Prime. The parties negotiated intermittently for several years. Bargaining was slow, with the parties trying to individually negotiate an agreement for each of the three hospitals. Negotiations languished and, ultimately, no deal was reached.

2. Daughters of Charity Health System.

The Daughters of Charity Health System (DOC or Daughters) is a health care system that is comprised of six hospitals located in the cities of San Mateo, California, Santa Clara County, California and Los Angeles, California. The UHW represented a total of approximately 3,000 employees within all six of the DOC hospitals.

Sometime in 2014, the DOC announced it intended to sell its hospital system. Prime was one of the entities interested in acquiring the DOC, so Prime, along with a number of other entities, bid on the sale of the DOC.

In October 2014, the DOC named Prime as the lead bidder. However, before Prime could actually acquire the DOC system, Kamala Harris, California's Attorney General, needed to

[4] GC Exh. 1(bbb), ¶¶9(a), 10(a), and 11(a).

approve the transaction. This encompassed a multi-step, multi-pronged process where Prime had to: 1) negotiate a sale agreement with the DOC, 2) submit the sale for approval to the California Attorney General, 3) undergo a review and public hearing process led by the state Attorney General's office to ensure the sale did not violate any anti-trust laws, 4) secure the Union's support for the deal, and 5) negotiate successor CBAs among all the hospitals (to include the six hospitals within the DOC system [if Prime's bid was approved] along with Encino, Garden Grove and Centinela). Accordingly, since the transaction needed to be approved by the Attorney General, and proceed through a public hearing process, opportunities existed for the general public and the Union to weigh in on the transaction.

Initially, the Union opposed Prime's acquisition of the DOC. However, in order to effectuate the deal and receive the Union's support, Prime wanted to reach a global settlement to resolve all of the issues between Prime and the Union and fix "really problematic labor terms in the Daughters' system, which made those systems not viable."[5] Prime believed that, with the Union's support of the deal, it would pave a smooth path toward Attorney General's approval of the Daughters' acquisition. By the same token, since the UHW also represented a majority of employees at the Daughters system, the DOC also believed the UHW's support of Prime's bid to acquire it was necessary to smooth the way for the acquisition bid.

As a result, Daughters' representatives facilitated several meetings between representatives of Prime and the Union in an effort to resolve outstanding issues between the parties and gain the Union's support for Prime's bid to acquire the DOC.

3. The global Memorandum of Understanding.

Between mid-October and November 2014, various representatives of Prime and the Union met over a two-and-a-half week period to try to reach a global settlement agreement, also called a Memorandum of Understanding (MOU). The MOU was intended to be a complete agreement between Prime and the Union and establish a long-term relationship between the parties in the event that Prime's purchase of the DOC was approved. The MOU contained four main components, which included:

1. A framework for a master CBA for the DOC system. Obtaining a master CBA for all of the DOC's hospitals was important to Prime, because Prime wanted to cut labor costs substantially at the DOC in order for Prime's acquisition of the DOC to be financially viable. By the same token, obtaining a master CBA for the DOC system was important for the Union so it could have consistent, comprehensive labor terms between the DOC's, Encino's, Garden Grove's and Centinela's unit employees.

2. An organizing election agreement which outlined the procedures/ timetables for the Union to organize other Prime hospitals.

3. Reaching a labor peace agreement between Prime and the Union to resolve all outstanding litigation between the parties.

4. Establishing successor CBAs for Encino, Garden Grove and Centinela. This component was the most relevant to this case. There were three topics that were paramount in the CBA negotiations:

[5] Tr. at 180.

a. Single Bargaining Unit. The parties intended that the Encino, Garden Grove and Centinela units be merged into a single bargaining unit.

b. Paid Healthcare. As part of the negotiations, Prime agreed to provide healthcare to all unit employees at the three hospitals.

c. California Differential. The California differential was a pay practice instituted in California in 2000 where employers were required to pay overtime after eight hours worked in a day, rather than after 40 hours worked in a work week. This pay practice was in place at Centinela but not at Encino or Garden Grove. Because there were different pay scales at each of the three hospitals, dealing with and agreeing upon the California differential at Centinela was necessary to provide pay consistency among the three hospitals.

Prime initially insisted that all of the components of the MOU be agreed upon, because, for example, without a master CBA for the DOC system, Prime could not afford to purchase the DOC system, much less make the necessary financial concessions for the CBA for Encino, Garden Grove and Centinela. Accordingly, as it related to the three hospitals' CBA, the parties originally contemplated that the CBA for the three hospitals would not become effective until the DOC acquisition was complete and the entire MOU was agreed upon.[6]

By early November 2014, there was a sense of urgency for Prime and the DOC to reach an agreement on the MOU, because it was rumored that the Attorney General's approval of the DOC transaction would occur during the week of November 2, 2014. As such, the parties began negotiating the terms of the MOU in earnest. Initially, there were several sets of high level meetings, including numerous individuals for both parties. Specifically, Dr. Prem Reddy, Prime's CEO (Reddy), Joseph Turzi, an attorney and labor consultant hired by Prime (Turzi), Schottmiller, Prime's Senior Labor Counsel, Troy Schell, Prime's General Counsel (Schell), Mike Sarian, Prime's President of Operations (Sarian), and sometimes Kavitha and Sunitha Reddy, Dr. Reddy's daughters participated for Respondents. David Regan, the Union's president (Regan), David Miller, Mr. Regan's assistant (Miller), and Bruce Harland, counsel for the Union (Harland), participated for the Union. These initial meetings involved all aspects of the MOU. While discussions proceeded, the parties were slow to come to agreement on all of the components of the MOU.

Given the level of urgency to get a deal done quickly, Conway Collis (Collins), a DOC representative who also participated in the meetings and served as a mediator, encouraged the parties to continue to meet and attempt to reach an agreement on the MOU. The parties agreed to meet, by telephone, on Friday, November 7.

B. Negotiations for Successor CBA for Encino, Garden Grove and Centinela

Between mid-day on November 7 and early morning on November 8, Reddy, Sarian, Schottmiller, Schell, and Turzi participated in negotiations with the Union by telephone on the global MOU. For the most part, the negotiations focused on an arbitration provision in the MOU.

By 11:00 p.m. on November 7, the parties agreed to break off into teams so that certain members of both sides could tackle outstanding components separately to move more quickly toward agreement. As such, the parties agreed that Schottmiller, representing Prime, and Greg Pullman, the Union's

[6] However, this condition was removed as will be discussed in detail later in this decision.

Chief of Staff (Pullman), would work out the terms for successor CBAs covering the three hospitals.

Over the course of the next few hours, Schottmiller and Pullman negotiated the terms of a CBA that covered unit employees at Encino, Garden Grove and Centinela. Schottmiller preferred to negotiate by email and wanted to put everything in writing to avoid any disagreements.[7] She copied Harland and Sarian on all of the emails between her and Pullman.

Schottmiller emailed Pullman the first proposal of the night (written in a table format and was referred to as the term sheet). Schottmiller's proposal included several issues that needed to be resolved.[8] One of the issues requiring resolution was the elimination of the "California differential" at Centinela.[9]

At this point, it is necessary to provide background concerning negotiations on the California differential. In October 2014, Schottmiller had been negotiating with Chief Union negotiator Ruppert on the differential issue. As of October 24, 2014, Respondents proposed to eliminate the California differential at Centinela as well as a new alternative base pay rate for any 12-hour employees at Centinela who would be converting to the new base pay rate in the contract. The Union did not respond to this proposal.[10] Because of this, according to Schottmiller, Prime wanted to have an agreement on the differential up front versus hammering out the specifics on the differential after contract ratification.[11] However, as will explained later in this decision, Pullman, who was now in charge of negotiating the terms of a successor CBA for the hospitals for the Union, was unaware of this history.

In response to Schottmiller's proposal, Pullman proposed to deal with the differential after the parties reached an agreement on a CBA. Nevertheless, Pullman emailed his redlined changes to Schottmiller's remaining proposal terms. He also requested a proposal from Schottmiller on the differential.[12]

By 11:54 p.m. on November 7, Schottmiller emailed Pullman (again, copying Harland and Sarian) advising that she thought the parties were close to finalizing a deal on a CBA.[13] However, in response to the California differential issue, Schottmiller told Pullman that the parties had previously reached a tentative agreement on it.[14] This, however, was incorrect as will be discussed later in this decision. In any event, Schottmiller also attached a draft of the master CBA for the DOC.

In response, Pullman emailed Schottmiller at 12:18 a.m. on November 8 confirming that anything the parties had not specifically changed would return to the current contract language. Schottmiller agreed.[15]

By 3:35 a.m. on November 8, Schottmiller and Pullman concluded their negotiations and had reached a tentative agreement on the terms for a CBA covering the Encino, Garden Grove and

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[7] Jt. Exh. 1 at 5 (Nov. 7, 2014, 11:08 p.m. email), 7–8.

[8] Id. at 7–8.

[9] Id, see also R. Exh. 88 at 13.

[10] R. Exh. 88 at 13.

[11] Id. at 8, see also R. Exh. 24.

[12] Jt. Exh. 1 at 5 (Nov. 7, 2014, 11:36 p.m. email), 9-10.

[13] Id. at 5 (Nov. 7, 2014, 11:54 p.m. email).

[14] R. Exh. 44 at 4. Schottmiller testified that, during her negotiations with Ruppert, she thought the parties reached a tentative agreement on the differential issue. Id.

[15] Jt. Exh. 1 at 4–5 (Nov. 8, 2014, 12:18 a.m. and 12:21 a.m. emails).

Centinela bargaining units.[16] As for the California differential issue, the parties wrote: "The California Differential solution agreed upon at Centinela will be included."[17] However, no language regarding the specifics of what was agreed upon was included in the term sheet. Rather, Pullman included language that the parties would verify the tentative agreement on the differential or include the specific terms regarding the differential at a later date.

In any event, while the parties appeared to reach agreement on the CBA, the parties' agreement was only tentative, because it was only one component of the MOU, and the parties had not yet reached agreement on the entire MOU. Despite this, Pullman emailed Collis and Schottmiller the final version of the tentative agreement for the three hospitals.[18]

C. Alleged Agreement to Execute Terms to be Incorporated into a CBA Covering Encino, Garden Grove, and Centinela

Schottmiller reviewed Pullman's November 8, 2014, 12:21 a.m. email and discussed it with Reddy, Sarian and Schell. On November 10, at 12:04 p.m., Schottmiller emailed Pullman, copying Harland, Sarian and Schell, stating that Prime was "in agreement" with the terms, "even absent a signed MOU."[19] In explaining the statement "even absent a signed MOU," Pullman testified that he read Schottmiller's statement to mean that Prime would execute the terms for the three hospitals' CBA regardless of whether the parties agreed on all of the other components of the MOU.[20] In fact, both Schottmiller and Turzi testified that, at some point during negotiations between November 8 and 10, Prime decided not to insist on conditioning the hospitals' CBA on signing a global MOU. However, on cross-examination, Schottmiller changed her testimony, explaining that the Union "knew" that Prime still wanted simultaneous settlements on the master DOC CBA.

At this point, it is important to discern precisely what was meant by the term "even absent a signed MOU," a matter that turns on an evaluation of the language in the document and credibility. To that end, after reviewing the document itself, I credit Pullman's interpretation of the phrase over that of Schottmiller.

First, I find that the language in the document speaks for itself. It clearly states that Schottmiller, speaking for Prime, agreed to the terms for the CBA even without agreement on the other components of the MOU. Second, I find that Pullman's testimony on this issue was consistent throughout direct and cross-examination. He answered questions fully and was neither vague nor evasive in his responses. Moreover, his testimony on this point was corroborated by Turzi, who credibly testified that Prime dropped the condition that agreement on any one component was contingent on agreement on the entire MOU.

In contrast, I do not find Schottmiller's testimony credible on this point. In fact, I found Schottmiller's explanations vague, evasive, confusing and inconsistent (particularly on cross-examination by the Charging Party's counsel). While Schottmiller tried to explain that she "misspoke" when she wrote "even absent a signed MOU," rather that she meant "even absent a deal on the master CBA for the DOC," her testimony was unpersuasive and incomprehensible for several reasons.

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[16] Jt. Exh. 1 at 2 (Nov. 8, 2014 3:35 a.m. email).
[17] R. Exh. 46 at 9.
[18] Id. at n. 16.
[19] R. Exh. 62 at 3.
[20] Tr. at 80.

First, even assuming Schottmiller meant to write "even absent a deal of the master CBA for the DOC," she certainly could have written that statement. I note that Schottmiller is an attorney and seasoned negotiator; thus, should understand the importance of wording during contract negotiations.

Second, any reasonable reader viewing the circumstances of the parties' bargaining to that point would understand that "even absent a signed MOU" does not mean that Prime was willing to execute a deal on the three hospitals' CBA only if they had a deal on the master CBA for the DOC. To proffer such an argument is patently ridiculous.

Third, and most importantly, Schottmiller's "explanation"—that while Prime decided not to insist on agreement on the global MOU it still wanted simultaneous settlements on the CBA for the hospitals and the DOC—defies logic, particularly in light of the fact that she testified that she conferred with Reddy, Sarian and Schell at each stage of the negotiations and none of them objected to Schottmiller's "even absent a signed MOU" statement.

The fact is that nothing in the record or testimony adduced by Respondents supported anyone's understanding that "even absent a signed MOU" meant the CBA for the three hospitals was specifically conditioned on signing a CBA for the DOC. Rather, all Schottmiller could say in response to what she meant by "even absent a signed MOU" was that the parties "all knew" that they were negotiating all the deals in combination. However, as Schottmiller also "knows," the document speaks for itself.

Accordingly, I find that, as of November 10, at 12:04 p.m., Prime agreed to the terms of the three hospitals' CBA and was willing to execute a CBA without any conditions. That included not having an agreement on a master CBA for the DOC.

In any event, it is undisputed that, in her 12:04 p.m. email, Schottmiller returned the parties' agreed-upon terms to a table format. She also inquired whether the Union was "ready to execute the CBAs" that week.[21] After reviewing Schottmiller's attached proposal, Pullman responded at 12:28 p.m. thanking Schottmiller for the outreach and noted that the Union was "ready to execute the CBAs" that week. Pullman returned the agreed-upon terms to a bulleted format (so the terms would be easier to read) and attached it to his email.[22] With regard to the California differential, the final language simply stated, [by Respondent], "We already T/A'ed a proposal with Richard [Ruppert] on how this would work," [by the Union], "we can verify tomorrow or send us the T/A" and [by both parties], "The California differential solution agreed to will be included."[23]

Upon receipt of Pullman's email, Schottmiller again reviewed the attachment and determined that it accurately reflected the parties' agreement. Schottmiller responded by email, at 12:31 p.m., clarifying one point —namely that any grievances "filed at any hospitals, even if they were not appealed to arbitration, need[ed] to be gone." Six minutes later, at 12:37 p.m., Pullman responded that the Union agreed and he "re-wrote [the bullet point on the term sheet] to make it clear. Pullman then asked Schottmiller "if we can sign off on this document." Pullman again attached the amended term sheet to his email.

[21] Again, Schottmiller's testimonial explanation is incredible in light of her 12:04 p.m. email. If the CBAs were conditioned upon the parties' agreement on the master CBA for the DOC, as Schottmiller would have me to believe, why would she want the Union to sign the CBA that same week? Her explanation is illogical. Rather, Schottmiller's 12:04 p.m. email supports the parties' understanding that "even absent a signed MOU" meant that Prime had agreed to the terms of the CBAs and was ready to execute the agreement without any other conditions attached.

[22] Jt. Exh. 2 at 44 (Nov. 10, 2014, 12:28 p.m. email), 49; see also Tr. at 81–82.

[23] R. Exh. 46 at 9; see also Jt. Exh. 2 at 51.

Schottmiller again reviewed Pullman's email and attachment, term by term, and discussed it with Reddy, Schell and Sarian. There was no mention about the California differential language. In addition, Prime never objected to the fact that the application of overtime wages without the differential would be verified "tomorrow," and they never sent the Union the language of the tentative agreement on the differential issue.

Nevertheless, Schottmiller testified that, after she, Reddy, Schell and Sarian reviewed and discussed the document, she received the "ok" from Reddy to sign the agreement. At 12:41 p.m., Schottmiller emailed Pullman stating, "We are good to go. I'm in negotiations today, so I will sign tomorrow. If you want to sign and send to me today, I can sign first thing tomorrow morning."[24] Schottmiller also requested that Pullman cancel the remaining bargaining sessions that were previously scheduled for later in the week.

In light of the purported agreement, Pullman agreed to cancel the bargaining sessions. Pullman also told Schottmiller that Ruppert would contact her to verify that the parties were implementing the correct wage scales pursuant to the new agreement.[25] At 3:32 a.m. on November 11, Schottmiller responded informing Pullman that Prime was "running the numbers on the health care premiums" and that she would "send as soon as I get it."

D. Prime Refuses to Execute the Agreement Covering Encino, Garden Grove and Centinela

At some point, between 3:32 a.m. and 12:41 p.m., on November 11, Schottmiller met with Reddy, Sarian, and Schell to discuss the three hospitals' agreement. Schottmiller testified that, during this conversation, Reddy directed Schottmiller to refuse to sign the agreement. According to Schottmiller, the only reason Reddy gave for instructing her not to sign the agreement was because he wanted the hospitals' CBA to be contingent on the master CBA for the DOC. Dr. Reddy was not called to testify.

Meanwhile, earlier that same morning, Ruppert emailed Schottmiller in an effort to finalize how overtime wages would be calculated without the differential.[26] Ruppert noted that, while the parties were close to agreement on the differential, they had not yet agreed on all terms. Nevertheless, he proposed additional language to be included in the settlement. While Ruppert acknowledged that he was "not trying to bargain the settlement proposal" he wanted to ensure that the parties were "clear on the CD [California differential] settlement."[27]

By 12:41 p.m., Schottmiller received an email from Pullman asking her why she had not yet signed and returned the agreement as promised. Schottmiller responded to Pullman telling him that she "cannot sign the attached [three hospitals agreement] until [the parties] reach agreement on the Daughter's deal."[28] At 2:15 p.m., Schottmiller responded to Ruppert's 8:39 a.m. email, and without addressing the substance of it, Schottmiller told him that she had "just let Greg know that [Prime] cannot agree to the three contracts until we reach an agreement on the Daughters."[29]

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[24] Here again, Schottmiller's testimonial "explanation" about the meaning of "even absent a signed MOU" lacks credibility in light of her 12:41 p.m. email.

[25] R. Exh. 46 at 9.

[26] R Exh. 59.

[27] R. Exh. 59a at 1.

[28] Jt. Exh. 4, at 59, Tr. at 88.

[29] R. Exh. 59a at 1.

Immediately following Schottmiller's email, the Union filed the instant unfair labor practice charge in this case.

III. DECISION AND ANALYSIS

A. The Parties' Positions

The sole issue in this case is whether Respondents violated Sections 8(a)(5) and (1) of the Act when they purportedly reached a complete agreement with the Union on a CBA covering Encino, Garden Grove and Centinela Hospitals but failed to execute the written agreement.

The General Counsel (GC) argues that Respondents violated the Act because they failed/refused to execute the agreement after the parties reached a "meeting of the minds" and established a complete agreement on all substantive terms of the hospitals' CBA. According to the GC and the Union, once Respondents dropped the condition that agreement on the hospitals' CBA be contingent on an agreement on the global MOU, the parties reached agreement on all terms on November 10, 2014, which, under Section 8(d), required Prime to execute.

Respondents deny that they violated the Act in any respect. Specifically, Prime asserts that the parties never reached an agreement on the hospitals' CBA because: (1) Schottmiller did not have authority to bind Prime to an agreement, (2) the parties "understood" that a CBA agreement covering the three hospitals was contingent on reaching agreement on the DOC's master CBA, and (3) the parties never reached agreement on all of the material terms of the CBA.

B. Prevailing Legal Authority

It is well settled that Section 8(d)'s obligation to bargain collectively requires either party, upon the request of the other party, to execute a written contract incorporating the agreement reached during negotiations.[30] Where the parties execute a memorandum of agreement which incorporates provisions of the former contract with additional terms agreed upon, the parties are obligated to execute the full collective-bargaining agreement containing the entire contract between the parties.[31] However, this obligation arises only if the parties had a "meeting of the minds" on all substantive and material terms of the agreement.[32] The General Counsel bears the burden of showing not only that the parties had the requisite "meeting of the minds," but also that the document which Respondents refused to execute accurately reflected that agreement.[33] If it is determined that an agreement was reached, a party's refusal to execute it is a violation of the Act.[34]

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[30] *Windward Teachers Assn.,* 346 NLRB 1148, 1150 (2006).

[31] *Electrical Workers Local 1228 (RKO General)*, 130 NLRB 342, 343–344 (1977); *Auto Workers Local 365 (Cecilware Corp.)*, 307 NLRB 189, 192 (1992).

[32] *Sunrise Nursing Home,* 325 NLRB 380, 389 (1998).

[33] See *Kelly's Private Car Service,* 289 NLRB 30, 39 (1988), enfd. sub nom. *NLRB v. W.A.D. Rentals Ltd.,* 919 F.2d 839 (2d Cir. 1990); *Cherry Valley Apartments,* 292 NLRB 38, 40 (1988); *Paper Mill Workers Local 61 (Groveton Papers Co.)*, 144 NLRB 939, 941–942 (1963).

[34] *Cherry Valley Apartments*, supra at n. 33 (burden of proof is on the party alleging the existence of the contract), see also *Graphic Communications Union District 2 (Riverwood International USA),* 318 NLRB 983, 990 (1995), see also *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941), *Hospital Employees Local 1199 (Lenox Hill Hospital)*, 296 NLRB 322 (1989)(once a "meeting of the minds" has been established, a contract may come into existence even before its execution).

A "meeting of the minds" occurs when there has been an agreement on "all substantive issues and material terms of the agreement."[35] A "meeting of the minds" does not require that both parties have identical subjective understandings on the meaning of the material terms of the contract.[36] Accordingly, the focus of the inquiry is not "the parties' subjective inclinations, but . . . their intent as objectively manifested in what they said to each other . . . [their] words and actions . . . [and] their 'tone and temperament."[37]

C. Analysis

1. Schottmiller had authority to negotiate and sign the Agreement on Respondents' behalf.

Before tackling the ultimate question of whether the parties reached an agreement in their 2014 CBA negotiations, I must establish whether Schottmiller had authority to speak on Respondents' behalf. Here, Respondents contend that it could not agree on the three hospitals' CBA, because Schottmiller did not have authority to enter into and/or sign the contract. The GC and the Union counter that, based on the evidence, Schottmiller was clearly given authority to negotiate and enter into an agreement with the Union; and as such, she was an agent of Respondents within the meaning of Section 2(13) of the Act. I agree with the GC and the Union.

On the issue of authority, the Board has long recognized that an agent assigned to negotiate a collective-bargaining agreement is deemed to have apparent authority to bind his or her principal in the absence of clear notice to the contrary. A principal may limit its agent's authority, however, by giving clear and timely notice (before an agreement is reached) to the other party that any tentative agreement is contingent on subsequent approval or ratification.[38]

In this case, the evidence is clear that Schottmiller had (at minimum) apparent authority to negotiate (on Prime's behalf) with the Union on the successor CBA for the three hospitals. Record evidence establishes that Schottmiller was one of the negotiators during the multiple meetings with the Union, Prime and DOC officials regarding the global MOU. When the DOC approval process appeared imminent, Schottmiller was specifically instructed to engage the Union in separate negotiations on a CBA for Encino, Garden Grove and Centinela. In so doing, Schottmiller became Prime's chief negotiator, took the lead on responding to the Union's contract proposals and communicating Prime's counterproposals. Schottmiller also copied Reddy, Prime's CEO and ultimate decision maker, Sarian, Prime's President of Operations, and Schell, Prime's General Counsel on every proposal/counterproposal to the Union, and at no time, did any of them disavow her authority to act/negotiate on Prime's behalf. In addition, no one from Prime ever told the Union that Schottmiller needed permission from Reddy to negotiate/bind Prime to an agreement.

Most importantly, when the parties reached a tentative agreement on the hospitals' CBA, Schottmiller's own testimony reveals that she, Sarian, Schell and Reddy discussed the terms of the CBA, and thereafter, Reddy told Schottmiller to sign the agreement.

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[35] *Teamsters Local 771 (Ready-Mixed Concrete),* 357 NLRB 2203, 2208.

[36] *Diplomat Envelope Corp.*, 263 NLRB 525, 535–36 (1982), see also *Health Care Workers Union, Local 250 (Trinity House)*, 341 NLRB 1034, 1037 (2004) ("Subjective misunderstandings or misunderstandings as to the meaning of terms which have been agreed to are irrelevant provided that the terms themselves are unambiguous judged by a reasonable standard").

[37] Id. (the "hallmark indication that a binding agreement has been reached" consists of ending a meeting or series of meetings "with handshakes and mutual expressions of satisfaction on the successful outcome of their endeavor").

[38] *A. W. Farrell & Son, Inc.*, 359 NLRB No. 154, slip op. at 2 (2013); *Teamsters Local 771 (Ready-Mixed Concrete)*, supra, at 2207 (2011).

Lastly, although Prime downplayed Schottmiller's role in bargaining and negotiations for Respondents, I find that Respondents have repeatedly given Schottmiller apparent, if not actual authority, to bind them in union negotiations. For example, Schottmiller served in a similar capacity as chief negotiator for Respondents when she negotiated *and* signed: (1) a Memorandum of Agreement with the Northern Rhode Island United Nurses & Allied Professionals Local 5067, (2) the 2013–2016 contract with the Garden Grove Registered Nurses Association/United Nurses Associates of California, and (3) the 2014–2018 contract with Encino's 121 RN Union California Nurses Association.[39]

Given the aforementioned facts and the absence of any clear and timely notice to the Union that Schottmiller's bargaining authority was contingent on subsequent approval by Dr. Reddy, I find that, clearly, Schottmiller was an agent of Respondents as set forth in Section 2(13) of the Act and maintained authority to bind Respondents to the terms of a successor CBA contract.

2. The Parties Unconditionally Reached an Agreement on the Three Hospitals' CBA.

Next, the parties disagree on whether they reached agreement on the terms for the hospitals' CBA. The GC and the Union argue that the parties reached an unconditional agreement on November 10, 2014. Respondents contend that the parties never had a complete agreement, because such a deal was contingent on an agreement on the master CBA for the DOC. Again, I agree the GC and the Union and find absolutely no merit to Respondents' assertions.

In fact, record evidence proves that the parties reached agreement on the terms for the hospitals' CBA on November 10, 2014. Specifically, when Schottmiller emailed Pullman at 12:04 p.m. that Prime was "in agreement" with the terms of the three hospitals CBA "even absent a signed MOU, I previously determined that that phrase unequivocally removed *any* conditions that agreement on the CBA was contingent on reaching agreement on any other component of the global MOU (i.e., reaching agreement on the DOC deal).[40] By 12:41 p.m., Schottmiller reinforced Prime's agreement and their willingness to execute the hospitals' CBA without conditions when, after conferring with and getting permission from Dr. Reddy, she told the Union that Prime was "good to go" with the terms of the hospitals' CBA and she would "sign [the agreement] tomorrow."

In accepting the contract terms, both parties also made remarks that were the email equivalent of shaking hands on the deal. Specifically, Schottmiller asked Pullman via email to cancel subsequently scheduled bargaining sessions, and Pullman informed Schottmiller via email that Ruppert would contact her to verify the correct wage scales and thanked her for her assistance in getting the parties to an agreement.[41] I find nothing in the record that even remotely suggests that, by Schottmiller's actions, the Union incorrectly assumed that Respondents did not intend to execute the hospitals' CBA separate from the other components of the global MOU.

Although Respondents argue that Schottmiller "miscommunicated" what she meant when Respondents were "in agreement" with the terms "even absent a signed MOU" and that the Union "understood" that the hospitals' CBA was intertwined with the DOC deal, as stated earlier in this decision, such an argument is patently ridiculous. Clearly, if Prime intended the hospitals' CBA to

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[39] CP Exhs. 1, 2, 4–5.

[40] See *Ethan Enterprises,* 342 NLRB 129, 133 (2004)(where a party claims that agreement on a contract is subject to a condition precedent, notice to the party that the condition is no longer required removes the condition precedent and allows for agreement to be reached).

[41] See *Teamsters Local 771 (Ready-Mixed Concrete)*, supra at 357 NLRB 2203, 2208 (explaining that handshakes and mutual expressions of satisfaction about the successful negotiation of a contract are "hallmark indication[s] that a binding agreement has been reached at the end of negotiations"); *Windward Teachers Assn.*, 346 NLRB at 1150–1151 (same).

be conditioned on agreement on the Daughters' deal, Schottmiller, as an attorney and experienced negotiator, could have easily said so. She did not.[42] Neither did Reddy, who reviewed the terms, nor Sarian or Schell, who were copied on the November 10 email stream.

Rather, I find the plain reading (and meaning) of Schottmiller's November 10 email speaks for itself. Specifically, when Respondents agreed to the terms of the hospitals' CBA "even absent a signed MOU," Prime basically conveyed to the Union that Respondents were willing to enter into a CBA covering the hospitals "as a standalone matter."[43] As the Union's counsel pointed, "there is no other way to read [that] phrase."[44] Accordingly, when Schottmiller received authority from and was instructed by Dr. Reddy to agree to and sign the terms of the hospitals' CBA, she unconditionally bound Respondents to those terms with the Union.

3. The Parties Came to a Meeting of the Minds on the Three Hospitals' CBA.

Since I find that the parties reached an agreement on November 10, 2014, the only remaining issue is whether there was a "complete" agreement, or a meeting of the minds, on all substantive and material terms. On this point, and an important one indeed, the parties dispute whether there was agreement on the California differential issue involving Centinela Hospital.

First, I conclude that the California differential was a material term of the agreement. Although the Union argues that the differential issue was immaterial because it "impacted only a subset of employees at Centinela hospital," the Union's argument misses the point. Rather, the differential issue is material, because the parties' intent was to ensure that the wages of *all* unit employees at *all* of the three hospitals were consistent across the board. In fact, testimonial and documentary evidence revealed that the parties envisioned drafting and implementing one CBA for all three hospitals such that the differential issue at Centinela needed to be resolved so the salary/wage scales and bonus structure for all bargaining unit employees at the three hospitals would be the same.

However, I find that there was a meeting of the minds on the California differential; to wit, because the parties had not specifically finalized the language on differential, they agreed to revert back to the contractual language in the current CBA. The undisputed evidence clearly shows that Pullman, on behalf of the Union, proposed that "anything the parties had not specifically changed would return to the original agreement," to which Schottmiller, on behalf of Respondents, agreed. The parties never "specifically" changed the language on the differential so, according to their agreement, the original differential language remained in effect.

Respondents contend that there was never a meeting of the minds between the parties because they never fully agreed to *all* of the terms on the California differential. Here, Respondents point to Ruppert's November 11, 2014 email to Schottmiller where he states that the parties "…were very close [on the California differential] but did not agree yet."[45] However, Respondents' argument is misplaced.

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[42] Even if Prime had truly conditioned agreement on the hospitals' CBA on reaching agreement on any other component of the MOU, that in itself would have been unlawful since Respondents would have been conditioning agreement (on the CBA) on nonpermissive subjects of bargaining (the global MOU). See *NLRB v. Longshoremen,* 443 F.2d 218, 220(5th Cir. 1971), enf'g. 181 NLRB 590 (1970).

[43] GC Br. at 16.

[44] CP Br. at 14.

[45] R. Exh. 59a at 1.

Respondents are partly correct that the parties had not finalized the language on the differential. Specifically, the record reveals that, after Respondents proposed to eliminate the differential on October 24, 2014, the Union failed to object to it.[46] Arguably, I could conclude that, by the Union's silence, they essentially acquiesced to eliminating the differential. However, what the parties had not finalized were the *details on how to implement overtime wages without paying the differential.* Here, I point to Respondents' Exhibit 46 at Page 9, where the Union indicates that they would verify overtime wages (which included clarifying how overtime wages would work without the differential) at a later date.

What Respondents and the Union ultimately agreed on was that they had already tentatively agreed on how to apply overtime wages without the differential (which was incorrect) and that the parties would either verify how those overtime wages would work "tomorrow" or Respondent would send the Union what was tentatively agreed. However, there is no evidence anywhere in the record that the parties changed or finalized the language regarding the differential. In essence, they really had not agreed to anything regarding eliminating the differential.

While Respondents point to the above facts and analysis, what they overlook is the fact that parties agreed that "anything *not specifically changed*" in the term sheet would revert back to the current CBA language (emphasis added). Therefore, since the parties failed to specifically change the language regarding the differential, based on their agreement about what would happen if there was a failure to agree on any specific change, they have agreed to return to the California differential language as it read in the original CBA with Centinela. Accordingly, when the parties reached agreement on November 10, 2014, on all of the remaining terms of the hospitals' CBA, there was a meeting of the minds on all of the material and substantive terms, and accordingly, a contract was formed.

Lastly, Respondents' argue that, to the extent there was an agreement, it should be rescinded due to a mutual mistake regarding agreement on the differential. Here, Respondents contend that, "because Schottmiller and Pullman both erroneously thought there was an agreement [on the differential] despite the lack of agreement . . . there [was] no contract due to the parties' mutual mistake."[47] However, I find this defense inapplicable, because the parties agreed that, if they failed to specifically change any language, they agreed to revert back to the language in the current CBA. Since the parties failed to change the differential language (because it was not finalized), they have agreed to return to the language in the current CBA. However, so that I leave no stone unturned, assuming the doctrine of mistake is applicable, I reject Respondents' defense on those grounds.

For a mistake to void a contract, the mistake must constitute a "basic assumption on which the contract was made" and must have a "material effect on the agreed exchange of performances." [48] In addition, Board law is clear that a contracting party's error, even if made in good faith, does not excuse its refusal to execute a collective-bargaining agreement unless that error constitutes a legally cognizable mutual or unilateral mistake.

In this case, there was no mutual mistake as to the terms of the differential, because Pullman, who ultimately negotiated the final terms, was unaware of what Schottmiller and Ruppert previously negotiated regarding the differential. Thus, to the extent there was a mistake it was made by Respondents.

The doctrine of unilateral mistake is also inapplicable under these circumstances, because, "rescission based on unilateral mistake should be a carefully guarded remedy and reserved for those

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[46] See R. Exh. 88 at 13.

[47] R. Br. at 17 n. 8.

[48] See Restatement (Second) of Contracts §152–153 (2015).

instances where a mistake is so obvious as to put the other party on notice of the error."[49] Respondents argue that, to the extent that Schottmiller conveyed to Pullman that the parties reached agreement on the differential, it was a unilateral mistake to which the Union knew or should have known (via Ruppert). However, even assuming Respondents made a bona fide mistake regarding agreement on the differential, their mistake was not so obvious as to put the Union (i.e., Pullman) on notice that Respondents' clearly manifested assent was made in error.[50]

The Board, in *North Hills Office Services,* 344 NLRB 523 (2005), rejected the employer's defense of unilateral mistake when presented with facts similar to those in this case. In *North Hills,* the employer, a building cleaning company, negotiated with the Union for a successor contract. The employer proposed to increase the wages of all employees employed at one of its New Jersey locations by 35-cents-per-hour (i.e., the one-tiered proposal). This proposal was conveyed to the Union. Ten days later, the Union voiced no objection to the proposed increase. However, once the agreement was drafted and finalized, the employer increased the wages of its full-time employees by 35 cents, but increased the wages of the part-time employees by only 15 cents (i.e., the two-tiered proposal).

The employer argued at the hearing that there was no enforceable agreement because: (1) it always intended to implement the two-tiered wage increase but its negotiator made a mistake and conveyed the one-tiered increase, and (2) the union was on notice of the unilateral mistake.

However, the Board, agreeing with the ALJ, found that the Union could not have known of the employer's mistake. Specifically, the ALJ in *North Hills* found that the Union had no way of knowing that the one-tiered proposal was a mistake because: (1) the employer's allegedly correct two-tiered proposal was based on a separate agreement that was never provided to the Union; and (2) the employer never told the Union or cited to the separate agreement as the basis for its two tiered wage proposal until the date of the hearing.[51] As such, the ALJ concluded that the Union had no basis to realize that the employer intended to implement the two-tiered wage increase instead of the one-tiered proposal it conveyed to the Union. Thus, when the Union, by not objecting to the one-tiered wage proposal, accepted the wage increase, there was a meeting of the minds on the interim wage increase such that the employer's refusal to sign and implement the agreement violated the Act.[52]

Like in *North Hills*, I find that Pullman had no way of knowing that Schottmiller's representation was incorrect since Prime never provided him with the details on the differential calculations when he requested it. Only Schottmiller knew what she and Ruppert negotiated regarding the differential. Pullman was completely unaware of what was negotiated on the differential and was only brought in to negotiate an overall agreement on the hospitals' CBA. While Respondents contend that Ruppert's knowledge about the status of eliminating the differential is imputed to the Union, even if true, it makes no difference, because, ultimately, the differential language was not finalized, and as such, the parties already agreed that anything not specifically changed would revert back to the language in the original CBA. Since the parties never specifically changed the language on the differential, they agreed to return to the differential language in the current CBA.

Nevertheless, despite Schottmiller being the only one privy to the discussions on eliminating the differential, and the fact that Respondents wanted the differential settled "up front," like in *North Hills,* Respondents do nothing to ensure that either is represented in the term sheet or that Pullman would

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[49] See *Apache Power*, 223 NLRB 191 (1976).

[50] *North Hills Office Services*, 344 NLRB 523 528 (2005).

[51] *North Hills,* 344 NLRB at 525–526.

[52] Id. at 526—527.

become aware that the differential language was not finalized. Rather, Respondents reviewed multiple versions of the term sheet several times where the language on eliminating the differential was not only excluded but other language specifically stated that the parties would verify overtime wages at a later date. Incredibly, Respondents failed to object to the proffered language then refused to sign the agreed terms on the ground that the identical language which they falsely represented (and never objected to) was defective.[53] In essence, Respondents want to rely on the very misrepresentations they made that they, alone, knew or should have known were false in order to void the contract.

In short, I find that, even assuming *arguendo* Respondent's unilateral mistake defense is applicable (which I find it is not), under these unique circumstances, the Union had no way of knowing that Scottmiller's representation about the differential was a "mistake." Schottmiller's error was not so obvious to justify rescission under *Apache Powder*, 223 NLRB 191 (1976).[54] Therefore, Respondents cannot void the contract on grounds of either unilateral or mutual mistake.

Accordingly, based upon the foregoing, I conclude that, on November 10, 2014, Respondents and the Union reached an unconditional and complete agreement on all substantive and material terms to be incorporated into a CBA covering bargaining unit employees at Encino, Garden Grove and Centinela. When Respondents refused to execute that agreement, they violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondents Prime are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. On November 10, 2014, Respondents and the Union reached an agreement on all of the substantive and material terms of a collective-bargaining agreement for all bargaining unit employees employed at Encino, Garden Grove and Centinela Hospitals.

3. Despite having reached an agreement with the Union on a collective-bargaining agreement for all bargaining unit employees employed at Encino, Garden Grove and Centinela Hospitals, Respondents failed/refused to execute that agreement after agreeing to do so.

4. Respondents violated Section 8(a)(5) and (1) of the Act by:

(a) Failing/refusing to execute an agreement reached with the Union on November 10, 2014, where the parties reached a meeting of the minds on all substantive and material terms of a collective-bargaining agreement for Encino, Garden Grove and Centinela Hospitals.

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[53] See *Kennebec Beverage Co., Inc.,* 248 NLRB 1298, 1298 n. 3 (1980)(employer violated the Act by refusing to execute an agreement when the employer "neither informed the Union that . . . [the provision in question] varied from the agreement reached or in any other manner attempted to comply with its duty to assist in reducing such agreement to writing" particularly when the agreement contained a wage provision that varied from the agreement reached by the parties). Accordingly, to the extent that Respondents intended to work out the differential application before executing the agreement, they had a duty to say so. They did not.

[54] See n. 49, see also *North Hills*, supra at n. 50 and 51 ("[a] party to a contract cannot avoid it on the ground that he made a mistake where the other [party] has no notice of such mistake and acts in perfect good faith").

REMEDY

Having found that Respondents engaged in certain unfair labor practices, I find Respondents must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The GC requests that Respondents schedule separate meetings at Encino, Garden Grove and Centinela Hospitals so that the attached Notice can be read during work time in the presence of a Board agent to all bargaining unit employees in English and Spanish. As grounds therefore, the GC argues that a notice posting is insufficient, because Respondents' conduct has " . . . eroded the Union's credibility among bargaining unit employees, [such that] the Union will . . . be viewed as a bargaining agent unable to get their employer to even sign an agreed-upon CBA."[55]

The Board has broad discretion to fashion a just remedy to fit the circumstances of each case it confronts.[56] The Supreme Court has interpreted Section 10(c) as vesting the Board with discretion to devise remedies that effectuate the policies of the Act.[57] To that end, I agree with the arguments and authorities cited by the GC, particularly since Respondents were previously found to have engaged in similar, recurring unlawful conduct by the Board.[58] Accordingly, I grant the GC's requested remedy.

Although the GC withdrew his request to have Respondents reimburse the Union for its costs and expenses incurred in collective bargaining that resulted in the instant complaint, the Union moves that Prime reimburse its bargaining and litigation costs based upon Respondents' unlawful conduct.

However, I decline to grant this enhanced remedy. While I find the violations Respondents committed are serious and their defense lacks merit, Respondents' violations and defenses therein are not "so numerous, pervasive, and outrageous" such that additional remedies are required "to dissipate fully the coercive effects of the unfair labor practices found."[59]

Therefore, on these findings of fact and conclusions of law and on the entire record, I issue the following recommended[60]

ORDER

Respondents Prime of Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute the agreement reached with the Union on November 10, 2014 on a collective-bargaining agreement covering all bargaining unit employees at Encino, Garden Grove and Centinela Hospitals.

(b) In any like or related manner interfering with, restraining, or coercing employees in the

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55 GC Br. at 22.

56 *Maramont Corp.*, 317 NLRB 1035, 1037 (1995).

57 *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898–899 (1984).

58 See ALJD at 2014 WL 6808993 (November 13, 2014).

59 *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995).

60 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

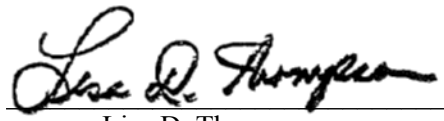
(a) Execute the agreement reached with the Union on November 10, 2014 on a collective-bargaining agreement covering all bargaining unit employees at Encino, Garden Grove and Centinela Hospitals.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(c) Within 14 days after service by the Region, post at its Encino, Garden Grove and Centinela Hospitals, copies of the attached notice marked "Appendix"[61] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondents' authorized representative, shall be posted by Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notice shall be read by Respondents' authorized representative, in English and Spanish in the presence of a Region 31 Board agent to all employees at their Encino, Garden Grove and Centinela Hospitals. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at their Encino, Garden Grove and Centinela Hospitals at any time since January 1, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondents have taken to comply.

Dated: Washington, D.C. February 18, 2016



Lisa D. Thompson
Administrative Law Judge

[61] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to execute agreements with the SEIU United Healthcare Workers—West Union when we and the Union have reached a meeting of the minds on all substantive and material terms of a collective-bargaining agreement covering all bargaining unit employees at Encino, Garden Grove and Centinela Hospitals.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL execute and implement the terms of an agreement we reached with the Union on November 10, 2014 to be incorporated in a collective-bargaining agreement covering all bargaining unit employees at Encino, Garden Grove and Centinela Hospitals.

WE WILL read this Notice in English and Spanish in the presence of a Board agent to all employees at the Encino, Garden Grove and Centinela Hospitals.

PRIME HEALTHCARE SERVICES
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11500 West Olympic Boulevard, Suite 600, Los Angeles, CA 90064

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-140827 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7175.